

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration Serial No. : 2,513,616
For the Mark : SMART BROOM
Registered : December 4, 2001

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Smart Inventions, Inc. :
Petitioner, : Cancellation No. _____
v. :
Yellowtop, North American, Inc., :
Registrant. :
-----X

BOX TTAB
FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

PETITION FOR CANCELLATION

Smart Inventions, Inc., a corporation organized and existing under the laws of California, located and doing business at Paramount, California believes that it will be damaged by continued registration of the mark SMART BROOM by Registrant under Registration No. 2,513,616 and hereby petitions to cancel the same.

As grounds therefore, it is alleged that:

1. Petitioner through its predecessor in title has adopted and continuously used the

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U.S. Patent & TMO/TM Mail Rpt Dt. #39

trademark SMART MOP, since at least as early as August 1, 1993 to the present in connection with the sale of mops and other related goods in Class 21.

2. Registration No. 2,513,616, sought to be cancelled, is for the mark SMART BROOM registered for use on indoor and outdoor brooms.

3. Use by petitioner's predecessor in title dates prior to the first date of use of the registrant, April 14, 1994.

4. The petitioner filed serial No. 76/540,818 to register its mark SMART MOP for mops in Class 21 on August 28, 2003, a date subsequent to registrant's registration date. On March 9, 2003, the Patent and Trademark Office issued an Office Action refusing petitioner's application on the grounds of confusing similarity with the registrant's registered mark. Therefore, petitioner's application has been blocked by registrant's registration to petitioner's damage.

5. Petitioner's predecessor in title had previously registered the mark SMART MOP as registration no. 1,874,695 registered January 17, 1995, and filed April 8, 1993 prior to the filing date and use date of the mark SMART BROOM by registrant. Although the petitioner's registration lapsed for failure to file a Section 8 declaration, use of the SMART MOP mark has been continuous to the present date.

6. Upon information and belief, the use of the SMART BROOM mark has been discontinued for many years and registrant has therefore abandoned registration No. 2,513,616.


7. If the Patent and Trademark Office maintains its allegation that a likelihood of confusion exists between the parties' marks, the intended use by petitioner of its mark will be impaired by the continued existence of registrant's registration of said abandoned mark and petitioner will be damaged by its inability to obtain a federal registration.

WHEREFORE, petitioner believes that it is damaged by the continued registration of registration No. 2,513,616, and therefore prays that this cancellation petition be sustained and registration No. 2,513,616 be canceled.

Petitioner hereby appoints Paul D. Supnik, a member of the Bar of the State of California, its attorney with full power of substitution and revocation to prosecute this cancellation proceeding and to transact all business in the U.S. Patent and Trademark Office in connection therewith.

SMART INVENTIONS, INC.

Dated: September 3, 2004

By: 
Paul D. Supnik, Its Attorney
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September 3, 2004

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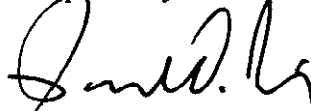
Re: Registration No.: 2,513,616
Registered: December 4, 2001
Mark: SMART BROOM

To the Commissioner for Trademarks:

Enclosed please find the original and two copies of a petition by Smart Inventions, Inc. for cancellation of the above-identified trademark registration. Also enclosed is a check in the sum of \$300 for the filing fee for the petition.

Please acknowledge receipt by attaching a date sticker and returning to this office.

Respectfully submitted,



Paul D. Supnik

Enclosures



09-07-2004